

MICHAEL COX,)
)
Plaintiff,)
)
v.) No. 1:13CV139 SNLJ
)
LINDA HURT,)
)
Defendant.)

This matter is before the Court upon the motion of Michael Cox, an inmate at Cape Girardeau County Jail, for leave to proceed in forma pauperis. The Court finds that plaintiff does not have sufficient funds to pay the entire filing fee and will assess an initial partial filing fee of \$12.90. Furthermore, based upon a review of the complaint, the Court finds that the complaint should be dismissed for lack of subject matter jurisdiction.

Pursuant to 28 U.S.C. § 1915(b)(1), a prisoner bringing a civil action in forma pauperis is required to pay the full amount of the filing fee. If the prisoner has insufficient funds in his or her prison account to pay the entire fee, the Court must assess and, when funds exist, collect an initial partial filing fee of 20 percent of the greater of (1) the average monthly deposits in the prisoner's account, or (2) the

average monthly balance in the prisoner's account for the prior six-month period. After payment of the initial partial filing fee, the prisoner is required to make monthly payments of 20 percent of the preceding month's income credited to the prisoner's account. 28 U.S.C. § 1915(b)(2). The agency having custody of the prisoner will forward these monthly payments to the Clerk of Court each time the amount in the prisoner's account exceeds \$10, until the filing fee is fully paid. Id.

Plaintiff has submitted an affidavit and a certified copy of his prison account statement for the six-month period immediately preceding the submission of his complaint. A review of plaintiff's account indicates an average monthly deposit of \$64.50, and an average monthly balance of less than \$64.50. Plaintiff has insufficient funds to pay the entire filing fee. Accordingly, the Court will assess an initial partial filing fee of \$12.90, which is 20 percent of plaintiff's average monthly deposit.

Standard

Under Rule 12(h)(3) of the Federal Rules of Civil Procedure, the Court is required to dismiss an action if subject matter jurisdiction is lacking. Under 28 U.S.C. § 1331, this Court has jurisdiction over cases "arising under the Constitution, laws, or treaties of the United States." And under § 1332, the Court has jurisdiction over actions in which the parties are citizens of different states and the amount in controversy exceeds \$75,000.

The Complaint

Plaintiff alleges that his landlord, Linda Hurt, was negligent in repairing a step at plaintiff's residence. Plaintiff claims that he was injured when the step collapsed. Plaintiff seeks monetary and injunctive relief. Both plaintiff and defendant are alleged to be Missouri citizens.

Discussion

Private negligence actions arise under state law. Federal question jurisdiction does not exist in this case, and the parties are not diverse. As a result, the Court must dismiss this action for lack of jurisdiction.

Moreover, to the extent that plaintiff is attempting to bring this action under 42 U.S.C. § 1983, it is legally frivolous. The allegations do not state a constitutional violation, and defendant is not a state actor.

Accordingly,

IT IS HEREBY ORDERED that plaintiff's motion to proceed in forma pauperis [Doc. 2] is **GRANTED**.

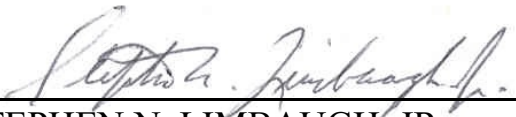
IT IS FURTHER ORDERED that the plaintiff shall pay an initial filing fee of \$12.90 within thirty (30) days of the date of this Order. Plaintiff is instructed to make his remittance payable to "Clerk, United States District Court," and to include

upon it: (1) his name; (2) his prison registration number; (3) the case number; and (4) that the remittance is for an original proceeding.

IT IS FURTHER ORDERED that this action is **DISMISSED** for lack of jurisdiction.

An Order of Dismissal will be filed contemporaneously.

Dated this 6th day of November, 2013.



STEPHEN N. LIMBAUGH, JR.
UNITED STATES DISTRICT JUDGE